**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF MISSOURI**

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| ALLIED WORLD SURPLUS LINES INSURANCE COMPANY, | ) | |
| | ) | Case No. |
| Plaintiff, | ) | |
| v. | ) | |
| GALEN INSURANCE COMPANY, GALEN INSURANCE MANAGEMENT COMPANY, INC., and DENNIS LOWRY, | ) | |
| Defendants. | ) | |

## COMPLAINT

Plaintiff Allied World Surplus Lines Insurance Company f/k/a Darwin Select Insurance Company ("Allied World"), for its Complaint against Defendants Galen Insurance Company ("GIC"), Galen Insurance Management Company, Inc. ("GIMC" and, together with GIC, "Galen") and Dennis Lowry ("Lowry"), alleges on knowledge, information and belief as follows:

## NATURE OF ACTION

1. Allied World seeks to rescind two professional liability insurance policies issued to Galen, which are defined below as the 2015-16 Policy and the 2016-17 Policy, and a declaration that as a result there is no coverage for any Claim under either of those policies. Allied World also seeks a determination that a specific Claim defined below as the Lowry Claim, which was made during the 2015-16 policy period, is related to a Claim defined below as the Nathans Claim, which was made during the policy period of what is defined below as the 2014-15 Policy. Consequently, pursuant to the related claim provisions of the policies, the Lowry

Claim is properly treated as a Claim first made during the policy period of the 2014-15 Policy and potentially covered, if at all, under the 2014-15 Policy.

Alternatively, Allied World seeks a declaration that, if the Lowry Claim is determined not to be related to the Nathans Claim, and so treated as a Claim first made during the policy period of the 2015-16 Policy, then it is barred from coverage because the policy under which it was tendered should be rescinded or, alternatively, because what is defined below as the Prior Knowledge Exclusion bars coverage. In addition, again if the Lowry Claim is determined not to be related to the Nathans Claim and so treated as a Claim first made during the policy period of the 2015-16 Policy, Allied World also seeks a declaratory judgment that Galen must reimburse Allied World for all amounts paid to date or in the future by Allied World on its behalf for the Lowry Claim and a money judgment against Galen in that amount.

## PARTIES

2. Allied World is a corporation organized under the laws of Arkansas with its principal place of business in New York. Allied World legally transacts insurance business in the State of Missouri and within the geographical jurisdiction of this Court.

3. GIC is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in Missouri.

4. GIMC is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in Missouri.

5. Lowry is the former Chief Financial Officer of GIC and is a resident and citizen of Missouri. Lowry is joined as a defendant in this action because he has asserted a claim against Galen, for which coverage has been requested by Galen under an insurance policy at issue in this action.

## JURISDICTION AND VENUE

6. This is a complaint for rescission and for declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the Federal Rules of Civil Procedure 57, for the purposes of determining a question of actual controversy between the parties as hereinafter more fully appears.

7. This action is ripe for adjudication.

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship between the parties, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. A substantial part of the events giving rise to the claims at issue occurred in this District, the policies were issued in this District, and the defendants reside in this District.

## FACTUAL ALLEGATIONS

### The Lowry Claim

10. Lowry filed a complaint against Galen on April 4, 2016 for wrongful termination of this employment, styled *Lowry v. Galen Insurance Management Company, Inc*., *et al.*, No. 16-SL-CC01237 (St. Louis County Cir. Ct., Missouri) (the "Lowry Claim"). A copy of Lowry's Complaint is attached to this Complaint as Exhibit 1.

11. Lowry asserts that, as GIC's Chief Financial Officer, he reported to GIC's President and Chief Executive Officer, George Schoedinger ("Schoedinger"). Lowry alleges that he was improperly terminated despite satisfactory performance.

12. Lowry asserts that, while he was employed at GIC, Schoedinger developed a close relationship with former attorney Howard Wittner, his sons Gregory and Kirk Wittner, and with Howard Wittner's law firm. Lowry asserts that, in May 2013, Schoedinger appointed

Gregory Wittner to be Chief Operating Officer ("COO") of GIC, even though he had little insurance experience, and that Schoedinger retained Howard Wittner to draft and review contracts for Galen.

13. Lowry's complaint also asserts that Howard Wittner was an officer of National Prearranged Service, Inc. ("NPS") and that, in November 2010, he and other NPS officers were indicted by the federal government on 50 felony counts, including mail and wire fraud, money laundering, and misappropriation of insurance premiums. After the indictments were handed down, Howard Wittner allegedly continued to perform services for Galen and attend Galen meetings.

14. Howard Wittner pleaded guilty to three counts of insurance fraud on July 9, 2013, and was sentenced to five years in prison.

15. According to Lowry, in October 2014, Howard Wittner was released early from prison due to a heart condition. Two days later, Lowry and other Galen employees allegedly saw Howard Wittner in Galen's offices interacting with Schoedinger and other Galen "officials." Lowry asserts that he first complained to Schoedinger about Howard Wittner's post-conviction presence at the office and later raised this issue with a Galen Board of Directors member, asserting that it raised the appearance of potentially illegal conduct by Galen and put Galen in jeopardy of being charged with a felony for allowing a person who was convicted of insurance fraud to participate in an insurance business. Schoedinger thereafter allegedly proposed that Howard Wittner work as a paralegal in the law office section of Galen's office suites where Howard Wittner's law firm already had office space.

16. Furthermore, according to Lowry's complaint, in October 2014, the Florida Department of Insurance rejected Galen's application to conduct insurance business in Florida in

part because of Gregory Wittner's position as COO of GIC. Lowry further alleges that, in November 2014, the Missouri Department of Insurance (the "MDOI") contacted Lowry during its investigation into Gregory Wittner's possible involvement in a fraudulent scheme, and his potential violation of Missouri statutory law. Lowry asserts that, meanwhile, he continued to complain to Schoedinger, board members, and others about Howard Wittner's presence at Galen. On August 13, 2015, Lowry was terminated, allegedly for speaking with the MDOI, which he alleges was retaliatory.

**The Nathans Claim**

17. Almost two years before Lowry filed his complaint, on June 14, 2014, Howard Nathans ("Nathans") filed a suit against Galen for wrongful termination of employment and breach of contract (the "Nathans Claim"). Nathans alleges that, while doing business as "Legal Insurance Services," he entered into a contract with Galen to provide administrative services. Nathans states that he reported directly to GIC's President and CEO, Schoedinger.

18. Like Lowry, Nathans alleges that Schoedinger developed a close relationship with Howard Wittner and the Wittner Law Firm. Nathans's complaint, like Lowry's complaint, explains that Howard Wittner and other officers of NPS were indicted by the United States on fifty felony counts, including mail and wire fraud, money laundering, misappropriation of insurance premiums, and defrauding insurance companies.

19. Nathans alleges that, after the November 2010 indictments were issued, he "repeatedly advised Schoedinger and [Galen] that continuing to do business with Howard Wittner ran counter to and was against the best business interests" of Galen. Nathans claims that federal authorities contacted him in March 2012 and asked about Howard Wittner and the activities alleged in the indictment. Thereafter, Nathans claims he was pressured by Schoedinger, Galen, and members of the Wittner family to support Howard Wittner. Nathans

claims that, when he refused to become a witness for Howard Wittner, Galen took away many of his job duties.

20. Following Howard Wittner's guilty plea, Nathans, like Lowry, allegedly advised Schoedinger that it was illegal to allow Howard Wittner to continue to participate in Galen's insurance business. Schoedinger terminated Nathans' employment contract on October 3, 2013.

**The 2014-15 Policy**

21. Allied World issued Private Risk-Transfer Organizations Management and Professional Liability Insurance Policy No. 0305-5295 to Galen for the Policy Period April 26, 2014 to April 26, 2015 (the "2014-15 Policy"). The 2014-15 Policy provides limits of liability of $1,000,000 each for Management Liability, Professional Liability, Employment Practices Liability, and $25,000 for Network Security Liability, subject to a maximum aggregate limit of liability of $1,000,000 for all Loss from all Claims under all Insuring Agreements. A copy of the 2014-15 Policy, including the application therefor, are attached to this Complaint as Exhibits 2A and 2B.

**The 2015-16 Policy**

22. Allied World issued a renewal Private Risk-Transfer Organizations Management and Professional Liability Insurance Policy to Galen for the Policy Period April 26, 2015 to April 26, 2016 (the "2015-16 Policy"). The 2015-16 Policy provides limits of liability of $2,000,000 each for Management Liability, Professional Liability, Employment Practices Liability, and $25,000 for Network Security Liability, subject to a maximum aggregate limit of liability for all Loss from all Claims under all Insuring Agreements of $2,000,000. A copy of the 2015-16 Policy, including the application therefor, are attached to this Complaint as Exhibits 3A and 3B.

23. The Declarations Page of both the 2014-15 Policy and the 2015-16 Policy states:

> **SUBJECT TO ITS TERMS, THIS POLICY PROVIDES COVERAGE FOR CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED TO THE INSURER IN ACCORDANCE WITH SECTION VIII(G) OF THE POLICY…**[1]

24. The Conditions section of both the 2014-15 Policy and the 2015-16 Policy includes the following provision:

> (A) **Limit of Liability**:
>
> Regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, or the number of claimants who make a **Claim** against the **Insured**, the **Insurer's** liability under this **Policy** is limited as follows:
>
> …
>
> (7) All **Related Claims** shall be considered a single **Claim** and shall be considered first made during the **Policy Period** or Extended Reporting Period, if applicable, in which the earliest **Related Claim** was first made. All **Loss** and **Defense Expenses** from such **Related Claims** shall be subject to one Limit of Liability, which shall be the highest Limit of Liability applicable to such **Related Claims**, and one Retention, regardless of whether more than one Insuring Agreement is applicable to such **Related Claims**.

2014-15 Policy and 2015-16 Policy, Section VIII.(A)(7).

25. The 2014-15 Policy and the 2015-16 Policy both broadly define "**Related Claims**" as "all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way." 2014-15 Policy and 2015-16 Policy, Section II.(DD).

26. The 2014-15 Policy and the 2015-16 Policy both define "**Claim**" as

> (B) "**Claim**" means:

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[1] Terms in bold appear as bold in the insurance policies.

> (1) any written demand for monetary, non-monetary, or injunctive relief;
>
> (2) any written request to toll or waive any statute of limitations;
>
> (3) any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding, and including any mediation or other alternative dispute resolution ordered or sponsored by such court;
>
> (4) any criminal proceeding which is commenced by the return of an indictment or similar document;
>
> (5) any administrative or regulatory proceeding or formal investigation, including a proceeding brought before the Equal Employment Opportunity Commission or any similar state or local agency, commenced by the filing of a notice of charges, order of investigation or similar document;
>
> (6) any arbitration proceeding initiated or compelled pursuant to a written agreement.
>
> A **Claim** will be deemed to have been first made when an Insured receives notice of the **Claim**. Provided however, that for purposes of Condition VIII.(G) of this **Policy**, the **Insured's** obligation to give notice of a **Claim** to the **Insurer** shall be determined in accordance with such provision.

2014-15 Policy and 2015-16 Policy, Section II.(B).

**The 2016-17 Policy**

27. Allied World issued a renewal Private Risk-Transfer Organizations Management and Professional Liability Insurance Policy to Galen for the Policy Period April 26, 2016 to April 26, 2017 (the "2016-17 Policy"). The 2016-17 Policy provides limits of liability of $2,000,000 each for Management Liability, Professional Liability, Employment Practices Liability, and $25,000 for Network Security Liability, subject to a maximum aggregate limit of liability for all Loss from all Claims under all Insuring Agreements of $2,000,000. A copy of the 2016-17 Policy, including the application therefor, are attached to this Complaint as Exhibits 4A and 4B.

**Galen's Requests for Coverage**

28. Galen requested coverage for the Lowry Claim under the 2015-16 Policy.

29. Galen previously requested coverage for the Nathans Claim under the 2014-15 Policy.

30. Allied World initially agreed to defend Galen against the Lowry Claim under the 2015-16 Policy under a complete reservation of rights. Allied World then determined that both Lowry and Nathans assert that they were improperly terminated based on their opposition to the involvement of Howard Wittner and the Wittner family at Galen, and their refusal to support and/or defend Howard Wittner and his family members in connection with investigations into their conduct. Thus, the Lowry Claim and the Nathans Claim are based on, arise out of, directly or indirectly result from, are in consequence of, or involve in some way the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events, which are related logically, causally and/or in some other way. Accordingly, the Lowry Claim and the Nathans Claim are Related Claims under the broad definition of that term in the 2014-15 Policy and the 2015-16 Policy, and they are properly considered a single Claim first made during the 2014-15 Policy Period when the Nathans Claim was first made.

31. Allied World advised Galen that it would continue to defend Galen against the Lowry Claim but, because the Lowry Claim and the Nathans Claim are properly considered a single Claim, the defense would be provided pursuant to a complete reservation of rights under the 2014-15 Policy, rather than under the 2015-16 Policy. Thus, if it is determined that the Lowry Claim is deemed first made during the 2014-15 Policy, the Claim is potentially covered but is subject to a full and complete reservation of rights generally and on the specific grounds communicated to Galen by Allied World.

**Misrepresentations in the 2015 Application**

32. On March 26, 2015, Lowry signed the application for the 2015-16 Policy (the "2015 Application"). The 2015 Application asks: "Does any proposed insured have knowledge

or information of any act, error, omission, fact or circumstance which might give rise to a claim which may fall within the scope of this proposed insurance?" 2015 Application, Question 6.(D) (the "Prior Knowledge Question"). Galen answered "No" to this question.

33. The 2015 Application then states:

> **WITHOUT PREJUDICE TO ANY OF THE RIGHTS AND REMEDIES OF THE INSURER, IT IS UNDERSTOOD AND AGREED THAT, ANY MATTER OR INFORMATION REQUIRED TO BE DISCLOSED IN RESPONSE TO THE ABOVE QUESTIONS IN [THIS SECTION], AND ANY CLAIM ARISING FROM OR RELATED TO SUCH MATTER OR INFORMATION, IS EXCLUDED FROM ALL PROPOSED INSURANCE.**

2015 Application, Section 6 (the "Prior Knowledge Exclusion").

34. The 2015 Application states before the signature block that:

> **THE UNDERSIGNED AUTHORIZED REPRESENTATIVE, REPRESENTS AND WARRANTS ON BEHALF OF THE NAMED INSURED AND ALL PERSONS OR ENTITIES FOR WHOM INSURANCE IS BEING SOUGHT THAT TO THE BEST OF HIS OR HER KNOWLEDGE AND BELIEF AND AFTER DILIGENT INQUIRY, THE STATEMENTS SET FORTH IN THIS APPLICATION AND ANY ATTACHMENTS HERETO ARE TRUE AND ACCURATE. IT IS UNDERSTOOD THAT THE STATEMENTS IN THIS APPLICATION, INCLUDING MATERIALS SUBMITTED TO OR OBTAINED BY THE INSURER, ARE MATERIAL TO THE ACCEPTANCE OF THE RISK, AND RELIED UPON BY THE INSURER.**

35. Allied World has discovered that, before March 26, 2015, when Lowry executed the 2015 Application, Galen was aware of the following facts or circumstances, all of which were required to be disclosed in response to this 2015 Application Prior Knowledge Question:

- Beginning in October 2014, Lowry, who signed the 2015 Application, was becoming increasingly concerned about the alleged influence of Howard Wittner, Greg Wittner, and Kirk Wittner on Schoedinger and Galen.
- No later than October 6, 2014, Lowry had begun keeping a diary of grievances against Galen, chronicling facts and circumstances that he believed jeopardized

his job and potentially exposed himself, Galen, and various Galen officers and board members to criminal and/or civil liability.

- Lowry was concerned that even after Howard Wittner was indicted for insurance-related felonies, he continued to perform services for Galen and attend Galen business meetings.
- Lowry was concerned that even after Howard Wittner pleaded guilty to insurance-related felonies, he continued to enter Galen's offices and interacted with Schoedinger and other Galen officials.
- Lowry complained to Schoedinger, a member of Galen's Board of Directors, and Galen's legal counsel that it was against Galen's business interests to have an association with a convicted felon and that the association raised the appearance of potentially illegal conduct by Galen and placed Galen in jeopardy of being charged with a felony. Despite these complaints, Lowry believed that Galen did not cease associating with Howard Wittner.
- Lowry understood that the Florida Department Insurance (a/k/a the "Florida Department of Financial Services") had rejected Galen's application to conduct insurance business in Florida, in large part because of Gregory Wittner's involvement with Professional Liability Insurance Company of America ("PLICA") as a member of its Board of Directors and his appointment by GIC as its COO. PLICA had been placed into conservatorship in Illinois, placed under rehabilitation and liquidation in New York, and changes in control of PLICA allegedly related to a fraudulent scheme.

36. Galen was obligated to disclose the facts stated in the preceding paragraph of this Complaint in response to Prior Knowledge Question in the 2015 Application because those facts made it aware of "of any act, error, omission, fact or circumstance which might give rise to a claim which may fall within the scope of this proposed insurance." The "No" response to the Prior Knowledge Question was therefore false.

37. In reliance on the representations that it received during the underwriting process, including the "No" response to Prior Knowledge Question in the 2015 Application, Allied World issued the 2015-16 Policy.

38. Had Galen disclosed in the 2015 Application the facts stated in paragraph 35 of this Complaint, or any of them, in response to the Prior Knowledge Question as it was obligated to do, Allied World would not have issued the 2015-16 Policy or would not have issued it on the same terms. Thus, Galen made a material misrepresentation in the 2015 Application.

**Misrepresentations in the 2016 Application**

39. On April 5, 2016, GIC's interim CEO, Jack Frye, signed an application for the 2016-17 Policy (the "2016 Application"). The 2016 Application includes the same Prior Knowledge Question as the 2014 Application, quoted above, to which Galen again responded "No." The 2016 Application also includes the identical Prior Knowledge Exclusion, quoted above.

40. The 2016 Application also includes the identical warranty above the signature block, quoted above.

41. Allied World has discovered that, before April 5, 2016, when Frye executed the 2016 Application, Galen was aware of all of the same facts and circumstances described in

paragraph 35 above, all of which were required to be disclosed in response to the 2016 Application's Prior Knowledge Question.

42. Galen was obligated to disclose the facts stated in paragraph 35 of this Complaint in response to the Prior Knowledge Question in the 2016 Application because those facts made it aware of "of any act, error, omission, fact or circumstance which might give rise to a claim which may fall within the scope of this proposed insurance." The "No" response to Prior Knowledge Question in the 2016 Application was therefore false.

43. The 2016 Application also asks for Galen's then-current A.M. Best rating and the ratings over the past five years, including the dates of each change in rating. 2016 Application, Question 1.(H)(i). A.M. Best provides a widely used "Financial Strength Rating," which is an independent opinion of an insurer's financial strength and ability to meet its ongoing insurance policy and contract obligations. In response to the question about its rating, Galen stated:

> Current: non-rated;
> 2013: B+
> 2014: B+
> 2015 (1st half): B+
> 2015 (2nd half): withdrew from A.M. Best, plan to reapply

This response was false. In fact, Galen's A.M. Best rating was downgraded to a B in June 2015. Galen then withdrew from A.M. Best in July 2015 to avoid having any rating at all because A.M. Best advised Galen that its rating was going to downgrade again to as low as a C rating.

44. The 2016 Application also asks whether Galen was then-currently, or at any time during the past twelve months, "A party to any legal proceeding involving matters which are material to its operations"? 2016 Application, Question 1.(I)(ii). Galen responded "Yes" to this question but disclosed only two matters, which were lawsuits filed by former employees and/or contractors Scott Perhacs and Howard Nathans. The 2016 Application also asks "Is there now

pending any litigation or regulatory proceeding or investigation against the Applicant or any of its subsidiaries"? 2016 Application, Question 6.(B). Galen answered "No" to this question. The answers to both of these questions were false. Galen failed to disclose in response to either question that on September 30, 2015, MDOI had filed a Petition for Supervision of GIC, stating that:

> The rapid reduction in Galen's policyholder surplus, the relationship between Professional Liability Insurance Company of America and Galen, the relationship between Howard A. Wittner and Galen, the numerous troubling aspects of the condition, operation, and corporate governance of Galen, the downgrade of Galen and its subsequent withdrawal from the A.M. Best rating system, the misleading statements made by Galen in its Uniform Certificate of Authority Application Expansion Application to additionally conduct insurance business nit eh state of Arkansas, Georgia, Kentucky, and Tennessee, and the provision of insurance by Galen without the property authority, render the continuance of Galen's business hazardous to the public and to its insureds, and constitute sufficient grounds to subject Galen to administrative supervision pursuant to section 375.1160.2(1)(a), RSMo (Supp. 2013).

45. In reliance on the representations that it received during the underwriting process, including the "No" response to the Prior Knowledge Question in the 2016 Application, Allied World issued the 2016-17 Policy.

46. Had Galen disclosed in the 2016 Application the facts stated in paragraphs 35 and 41-44 of this Complaint, or any of them, as it was obligated to do, Allied World would not have issued the 2016-17 Policy or would not have issued it on the same terms. Thus, Galen made a material misrepresentation in the 2016 Application.

## COUNT I

## Rescission of the 2015-16 Policy

47. Allied World realleges and incorporates by reference the allegations of paragraphs 1 through 46 of this Complaint.

48. Representations made by Galen in the 2015 Application were false and material.

49. Allied World has tendered to Galen a refund of the premium paid for the 2015-16 Policy and hereby retenders a refund of the premium. By this means, Allied World has restored the status quo ante existing between Allied World and Galen before the misrepresentations and omissions made by Galen in the 2015 Application.

50. As a result of the material misrepresentations and omissions made by Galen in the 2015 Application described in this Complaint, Allied World is entitled to rescind the 2015-16 Policy such that it is void *ab initio*, and Allied World has no obligations thereunder. Allied World is also entitled to a declaration that there is no coverage for any Claim under the 2015-16 Policy, including the Lowry Claim if it is determined to be a Claim first made during the policy period of the 2015-16 Policy contrary to Allied World's contention that the Lowry Claim is considered a Related Claim with the Nathans Claim and thus properly treated as a Claim that was first made under the 2014-15 Policy.

**COUNT II**

**Rescission of the 2016-17 Policy**

51. Allied World realleges and incorporates by reference the allegations of paragraphs 1 through 46 of this Complaint.

52. Representations made by Galen in the 2016 Application were false and material.

53. Allied World has tendered to Galen a refund of the premium paid for the 2016-17 Policy and hereby retenders a refund of the premium. By this means, Allied World has restored the status quo ante existing between Allied World and Galen before the misrepresentations and omissions made by Galen in the 2016 Application.

54. As a result of the material misrepresentations and omissions made by Galen in the 2016 Application described in this Complaint, Allied World is entitled to rescind the 2016-17 Policy such that it is void *ab initio*, and Allied World has no obligations thereunder. Allied

World is also entitled to a declaration that there is no coverage for any Claim under the 2016-17 Policy.

**COUNT III**

**Declaratory Judgment That The Lowry Claim Is Deemed to Have Been First Made Under the 2014-15 Policy**

55. Allied World repeats and incorporates by reference the allegations in paragraphs 1 through 46 of this Complaint.

56. The Lowry Claim contains many of the same allegations as previously made in the Nathans Claim. Both allege that Schoedinger associated with Howard Wittner, his sons, and their law firm both before Howard Wittner's indictment and plea, and thereafter. Both allege that they complained to Schoedinger that Galen was violating the law by permitting Howard Wittner to participate in Galen's insurance business. Both allege that they cooperated with investigators who were investigating actions by Howard and/or Gregory Wittner. Both allege that, despite their favorable performance reviews, Schoedinger terminated their employment after they complained about potential felony conduct by Galen and cooperated with investigators.

57. Both the Lowry Claim and the Nathans Claim are based on, arising out of, directly or indirectly resulting from, in consequence of or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances situations, transactions or events, whether related logically, causally or in any other way.

58. Because the Lowry Claim is a Related Claim to the Nathans Claims, the Lowry Claim is deemed to have been first made under the 2014-15 Policy, which is when the Nathans Claim was first made.

59. By reason of the foregoing, Allied World is entitled to a judgment declaring that the Lowry Claim is deemed to have been first made under the 2014-15 Policy.

**COUNT IV**

**In the Alternative, Declaratory Judgment that the Prior Knowledge Exclusion Bars Coverage for the Lowry Claim Under the 2015-16 Policy**

60. Allied World repeats and incorporates by reference the allegations in paragraphs 1 through 46 of this Complaint.

61. Galen was required to disclose to Allied World the circumstances identified in paragraph 35 above in response to the Prior Knowledge Question in the 2015 Application, but did not.

62. The Lowry Claim arises from knowledge or information that was not disclosed in response to the Prior Knowledge Question in the 2015 Application.

63. To the extent that the Lowry Claim is deemed to have been first made during the 2015-16 Policy Period, and to the extent that the 2015-16 Policy is not rescinded and determined to be void *ab initio*, Allied World is entitled to a judgment declaring that the Prior Knowledge Exclusion in the 2015-16 Policy bars coverage for the Lowry Claim under that policy.

**COUNT V**

**Declaratory Judgment That, If It Is Determined That There Is No Coverage for the Lowry Claim, Allied World Is Entitled to Reimbursement of All Amounts Paid to Date Or In the Future for the Lowry Claim and for a Money Judgment**

64. Allied World repeats and incorporates by reference the allegations in paragraphs 1 through 46 of this Complaint.

65. Subject to a complete reservation of rights, including the right to withdraw the defense and seek reimbursement of defense costs, Allied World is providing a defense to Galen under the 2014-15 Policy for the Lowry Claim.

66. To the extent that the Court determines that that the Lowry Claim is not a Related Claim to the Nathans Claim and therefore that the 2015-16 Policy should apply to the Lowry Claim, there is no coverage for the Lowry Claim on the grounds stated in Counts I and IV above. Accordingly, Allied World is entitled to reimbursement of all defense costs it has paid and all defense costs and/or indemnity that it pays hereafter under the 2015-16 Policy for with the Lowry Claim.

67. Accordingly, Allied World requests declaration that Galen is obligated to reimburse Allied World for all defense costs it has paid and all defense costs and/or indemnity that it pays hereafter for the Lowry Claim, and a money judgment against the Galen in that amount.

WHEREFORE, Allied World respectfully requests that this Court:

A. Enter judgment that Allied World is entitled to rescind the 2015-16 Policy and the 2016-17 Policy and that those policies are void *ab initio*;

B. Declare that, because the 2015-16 Policy and the 2016-17 Policy are rescinded and void *ab initio*, Allied World has no coverage obligations under the 2015-16 Policy or the 2016-17 Policy for any Claim, including the Lowry Claim if the Lowry Claim is deemed to have been first made during the policy period of the 2015-16 Policy;

C. Declare that the Lowry Claim is related to the Nathans Claim and therefore deemed to be first made under the 2014-15 Policy;

D. Declare that, to the extent that the Lowry Claim is deemed to have been first made under the 2015-16 Policy, and that the 2015-16 Policy is not rescinded and determined to be void *ab initio*, that the Prior Knowledge Exclusion bars coverage for the Lowry Claim under the 2015-16 Policy;

E. To the extent that the Lowry Claim is deemed to have been first made under the 2015-16 Policy, award Allied World a money judgment against Galen for the amount of all amounts it has paid to date or pays in the future on behalf of Galen for the Lowry Claim; and

F. Award Allied World all other relief to which it may be entitled.

Dated: March 29, 2017

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4842-0775-8662, v. 1